

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

v.

Lawrence Leon Jackson

Movant.

) CR 04-0358-PHX-DGC
)
) CV 06-1232-PHX-DGC (JRI)
)
)
)

O R D E R

Movant Lawrence Leon Jackson has filed a Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 (Doc. # 126). On November 3, 2004 a jury convicted Movant of (1) conspiracy to commit murder, (2) conspiracy to commit aggravated assault, (3) conspiracy to commit kidnaping, (4) first degree murder, (5) use of a firearm in a crime of violence, (6) assault resulting in serious bodily injury, (7) kidnaping, (8) first degree felony murder, and (9) assault with a dangerous weapon. On March 21, 2005, Movant was sentenced to life in prison plus 84 months.

Movant presents three grounds for relief: (1) the district court was without jurisdiction to try or sentence Movant as he is not an "Indian" as articulated in the indictment; (2) the prosecution failed to disclose exculpatory evidence to Movant; and (3) trial counsel was ineffective in failing to contact two alibi witnesses. On March 30, 2005, a notice of appeal was filed by Movant's counsel (Doc. # 103). As a result, there is an appeal pending in the Ninth Circuit Court of Appeals. See United States v. Corona-Garcia, No. 05-1005 (9th Cir.) and United States v. Corona-Garcia, No. 05-10027 (9th Cir.).

For reasons of judicial economy, district courts should not consider an application for writ of habeas corpus when the petitioner has a direct appeal pending in the Court of Appeals or the Supreme Court. United States v. Pirro, 104 F.3d 297, 299 (9th Cir. 1996) (citing United States v.

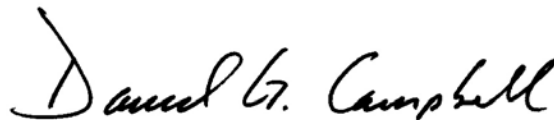
1 Deeb, 944 F.2d 545, 548 (9th Cir. 1991), cert. denied, 503 U.S. 975 (1992)). ““Except under most
2 unusual circumstances . . . no defendant in a federal criminal prosecution is entitled to have a direct
3 appeal and a section 2255 proceeding considered simultaneously in an effort to overturn the
4 conviction and sentence.”” Tripati v. Henman, 843 F.2d 1160, 1162 (9th Cir.) (quoting Jack v.
5 United States, 435 F.2d 317, 318 (9th Cir. 1970), cert. denied, 402 U.S. 933 (1971)), cert. denied,
6 488 U.S. 982 (1988). See also Rule 5, Rules Governing Section 2255 Proceedings, Advisory
7 Committee Note (“[T]he courts have held that [a § 2255 motion] is inappropriate if the movant is
8 simultaneously appealing the decision.”). There are no unusual circumstances that would justify
9 an exception to this rule. Accordingly, the § 2255 Motion will be dismissed without prejudice.

10 **IT IS THEREFORE ORDERED:**

11 (1) That the Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal
12 Custody pursuant to 28 U.S.C. § 2255 (Doc. # 126) is dismissed without prejudice; and

13 (2) That the Clerk of Court shall terminate the civil action, CV 06-1232-PHX-DGC (JRI),
14 which was opened in connection with this matter.

15 **DATED this 22nd day of May, 2006.**

16
17
18 

19 _____
20 David G. Campbell
21 United States District Judge
22
23
24
25
26
27
28